

The Honorable Marc L. Barreca
Chapter 11
Hearing Location: Seattle, Washington
Hearing Date/Time: December 16, 2021 at 9:30 AM
Response Due: December 9, 2021

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re:

TIMOTHY DONALD EYMAN,

Debtor.

NO. 18-14536-MLB

STATE OF WASHINGTON'S MOTION
FOR CONVERSION TO CHAPTER 7

I. RELIEF REQUESTED

The State of Washington requests pursuant to Debtor Eyman's default under the terms of the Chapter 11 Plan of Reorganization, Dkt. #270 (Plan) that this bankruptcy be converted to Chapter 7. Since October 30, 2021, Debtor Eyman has been in default due to his failure to make his September and October 2021 Plan payments. In Debtor Eyman's recent filing, Debtor's Response to Motion for Trustee, pg. 2, Docket # 382, Debtor Eyman admits he is in default under the Plan and has failed to file the most recent report with the US Trustee. This motion comes after the court continued the November 18, 2021 hearing on the State's motion to appoint a Chapter 11 trustee and for permission to record its judgment in order to consider the alternative of a Chapter 7 conversion. Therefore, the State requests as an alternative to appointing a Chapter 11 trustee, that the Court consider converting this bankruptcy to a Chapter 7. (The State also requests that it be allowed to record its judgment in Snohomish and King counties.) As part of

1 this motion, the State incorporates by reference the facts and arguments made in the State's
2 Application for Appointment of a Chapter 11 Trustee and related Reply¹.

3 II. STATEMENT OF FACTS

4 Under the Plan, if Debtor Eyman fails to cure default within 30 days of service of a Notice
5 of Default, all amounts under the Plan become "immediately due and payable" and the "state
6 rate of 12% per annum" applies to "any present or future amount owed on the State's claims."
7 Plan, Section 9.01 Default, pg. 12. Therefore, the State's claim is now immediately due and
8 payable and 12% interest is accruing on the claim.

9 The Plan directly addresses conversion to a Chapter 7. Under Plan Section 6.08, Sale of
10 Estate Property, "if there is a conversion to Chapter 7, Debtor may not sell or in any way
11 encumber or transfer his home." Additionally, on conversion, the Eyman home vests in the
12 bankruptcy estate under Plan Section 6.13, Vesting, which states "on confirmation, the Eyman
13 home listed in the bankruptcy schedules will be considered property of the estate with the
14 conditions stated in Section 6.08 above. If upon further motion or hearing, this case is converted
15 to a case under Chapter 7 of the Code, all property, whether residing in the Estate, or acquired
16 by the Debtor during the pendency of the Chapter 11 case as provided under Section 541 of the
17 Bankruptcy Code shall automatically vest in the Chapter 7 bankruptcy estate."²

18 Due to Debtor Eyman's default, the State is requesting that the case be converted to a
19 Chapter 7 bankruptcy and that the above Plan provisions take effect.

21 ¹ See Application for Appointment of a Chapter 11 Trustee and Motion to Enforce Default Provisions and
22 Record Judgment, Docket # 370 and Reply to Debtor's Response RE: State's Motion to Enforce Default Provisions
and Appointment of a Chapter 11 Trustee and Record Judgment, Docket # 386.

23 ² Debtor Eyman has agreed the Eyman home is an asset of the estate. In the Debtor's Ex Parte Order
24 Reopening Ch 11 Case, Docket #303 in the bankruptcy, the order states the case was reopened "to administer an
25 asset of the estate as provided in the Debtor's confirmed *4th Amended Plan of Reorganization*." In Defendant
26 Vortman & Feinstein Answer to Adversary Complaint and Affirmative Defenses, Pg. 3, Docket # 6 in Adversary
Action 21-01041, the Answer states: "Defendant V & F admits the Motion to Reopen the case was to allow sale of
the Debtor's and Estate's interest in the marital Eyman Hme[sic], if any, but denies any legal conclusions as to what
that interest may be. Defendant V & F admits that whatever that interest is, if any, was not abandoned and is an
asset of the estate."

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III. EVIDENCE RELIED UPON

The State relies upon the documents filed in this bankruptcy including the Chapter 11 Plan of Reorganization, Docket #270.

IV. LEGAL AUTHORITY

A. There is cause to convert to a Chapter 7 bankruptcy.

The Bankruptcy Code in 11 U.S.C. § 1112(b)(1) provides for conversion or dismissal of a Chapter 11 bankruptcy case where cause exists:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

The State as the primary creditor in this case, is a party in interest able to request conversion. 11 U.S.C. § 1109(b). Once requested, Section 1112(b) requires the bankruptcy court to engage in a two-step analysis to determine if conversion is appropriate. *Woods v. Erickson, LLP v. Leonard (In re AVI, Inc.)*, 389 B.R. 721, 729 (9th Cir. BAP 2008). First, the court must determine if “cause” exists for conversion or dismissal. *Id.* If so, then the court must determine which remedy, conversion or dismissal, better serves the interests of the creditors and the estate. *Id.* The bankruptcy court is given wide discretion to convert a chapter 11 case to a chapter 7 case for cause. *Greenfield Drive Storage Park v. Cal. Para-Prof’l Servs., Inc. (In re Greenfield Drive Storage Park)*, 207 B.R. 913, 916 (9th Cir. 1997).

In 11 U.S.C. § 1112(b)(4), the Code sets out a non-exclusive list of 16 examples of “cause” for conversion, several of which apply to Debtor Eyman’s failure to make plan payments. Section 11 U.S.C. § 1112(b)(4)(A), allows a bankruptcy to be converted when there is “a substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” Similar to this case, the court in *In re Red Door Lounge, Inc.*, 559

1 B.R. 728, 735 (Bankr. D. Mont. 2016), found that where a debtor had failed to make monthly
2 payments under the provisions of a confirmed plan and the debtor's projections for future income
3 for the business were without foundation, there was no reasonable likelihood of success and that
4 conversion from Chapter 11 to Chapter 7 was appropriate. The issue was whether "debtor's
5 business prospects justify continuance of the reorganization effort" and without the Debtor's
6 payments the plan could not continue. *Id.* at 735. Here, Debtor Eyman has represented in his
7 recent Declaration that he has "used the last of [his] financial resources to pay towards allowed
8 claims" and does not have "any income" to modify the Plan.³ While the State has its doubts as
9 to the veracity of Debtor Eyman's representations, as indicated in its Reply to its Motion to
10 Enforce Default Provisions, his default and professed lack of income make conversion
11 appropriate under section (A) and is an option the State is proposing based upon these
12 representations by the Debtor.

13 Debtor Eyman's failure to make Plan payments also establishes cause under section
14 1112(b)(4)(M) "inability to effectuate substantial consummation of a confirmed plan" and
15 section 1112(b)(4)(N) "material default by debtor with respect to a confirmed plan." Courts
16 have held that a failure to make monthly payments required by a confirmed plan constitutes
17 cause under sections 1112(b)(4)(M) and (N). *In re Red Door Lounge, Inc.*, 559 B.R. at 735 and
18 *In re Hook*, 469 B.R. 62, 66-67 (D.C. Colo. 2011). Similarly, when Debtors were unable to find
19 financing needed to pay debts in a confirmed plan, the court found that conversion was
20 appropriate under sections 1112(b)(4)(M) and (N). *In re Sundale*, 471 B.R. 300, 303 (Bankr.
21 S.D. Florida 2012).

22 Debtor Eyman's failure to make plan payments, failure to establish that he will have
23 future income to pay the debts owed under the plan and lack of compliance with reporting
24 requirements are cause for conversion under § 1112(b)(4). Additionally, a court is able to

25 ³ See Declaration of Debtor in Response to State of Washington's Motion for Appointment of a Trustee,
26 pg. 2, Docket # 383.

1 “consider other factors as they arise, and should use its equitable powers to reach the appropriate
2 result in individual cases”. *In re Products International Co.*, 395 B.R. 101, 109 (Bankr. D.
3 Arizona 2008) citing *In re Consolidated Pioneer Mortg. Entities*, 248 B.R. 368, 375 (9th Cir.
4 B.A.P. 2000). Debtor Eyman’s contention that plan payments have stopped due to fundraising
5 restrictions placed upon him by the State lacks credibility since he continues to aggressively
6 raise funds and the State has not restricted his fundraising. In the previous month, Debtor Eyman
7 posted or shared his personal fundraising appeals an estimated 100 times on Facebook.
8 Declaration of Tony Perkins in Support of State of Washington’s Motion to Enforce Default
9 Provisions, Docket # 386-1. Debtor Eyman’s lack of credibility as to his ability to fundraise and
10 his financial resources confirms he should not be afforded the protections of a Chapter 11
11 bankruptcy without a trustee in place and should not have the debtor-in-possession role.

12 **B. Conversion is in the best interests of the creditors.**

13 Once a determination is made that cause exists for conversion, the court must decide
14 whether conversion or dismissal is in the best interests of the creditors and the estate. *In re*
15 *Owens*, 552 F.3d 958, 961 (9th Cir. 2009) and *In re AVI, Inc.*, 389 B.R. at 729, citing *In re*
16 *Nelson*, 343 B.R. 671, 675 (BAP 9th Cir. 2006). In this case, conversion is in the best interests
17 of the creditors because it ensures the homestead exemption claimed on the Eyman home
18 remains at \$125,000, which was the statutory amount of the homestead exemption at the time of
19 the filing of Debtor Eyman’s bankruptcy petition. Wash. Rev. Code § 6.13.030 (2007). Under
20 RCW 6.13.070, homestead value is fixed at the time of the petition date. Conversion does not
21 alter the date the petition was filed, the date the case was commenced, or the date of the order
22 for relief in the original case. 11 USC § 348(a); *In re Ybarra*, 424 F.3d 1018, 1022 (9th Cir 2005)
23 and *In re First Protection, Inc.* 440 B.R. 821, 832 (9th Cir. BAP 2010). If the bankruptcy is
24 dismissed, the homestead value will substantially increase under the amendment to the
25 homestead statute that became effective on May 12, 2021. Wash. Rev. Code § 6.13.030 (2021).

1 This will leave fewer assets available for distribution to creditors. Debtor Eyman should not be
2 rewarded for his conduct of failing to fund his Chapter 11 plan and falsely proclaiming the State
3 has prevented him from fundraising by a dismissal that will reward him with a larger homestead
4 exemption.

5 In a motion for conversion, the bankruptcy court has an obligation to consider “what
6 would happen to all creditors” when considering conversion or dismissal, so the possible change
7 in the homestead value supports conversion. *In re Sullivan*, 522 B.R. 604, 613 (9th Cir. BAP
8 2014). Additionally, since Debtor Eyman has failed to cooperate with his creditors and has not
9 been forthcoming concerning his fundraising efforts, Debtor Eyman lacks credibility and a
10 trustee is needed to administer his estate to ensure assets are distributed to protect Eyman’s
11 creditors. Conversion will hopefully allow the creditors to receive some payment on their
12 claims. If the case is converted, a Chapter 7 trustee would be appointed and be able to determine
13 the available assets of Debtor Eyman. Due to the representations by Debtor Eyman that he has
14 no financial resources, the unsecured creditors do not have an “avenue for prompt or meaningful
15 payment outside a bankruptcy case” making conversion with the assistance of a trustee a benefit
16 to these creditors. *Id.* at 613. Since the Plan provisions vest the Eyman home and all exempt real
17 and personal property of the Debtor into the Chapter 7 estate, a Chapter 7 trustee will have the
18 ability to administer these assets and make distributions to the creditors.

19 V. CONCLUSION

20 In conclusion, Debtor Eyman is in default under the bankruptcy plan and there is cause
21 to convert this case to Chapter 7 under 11 U.S.C. § 1112(b)(4)(A), (M) and (N). Conversion
22 rather than dismissal is in best interests of the creditors. The State also renews the request to file
23 an abstract of the judgment obtained in *State of Washington v. Tim Eyman, et al.*, Thurston
24 County Superior Court case no. 17-2-01546-34 in Snohomish and King Counties.

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1 DATED this 23rd day of November, 2021.

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4 /s/ Susan Edison

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